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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File No. EB-04-BF-018
	)	
M.B. Communications, Inc.	)	NAL/Acct. No. 200432280003
WYLF	)	
Penn Yan, New York	)	FRN: 0000012005
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: August 25, 2004**

By the Resident Agent, Buffalo Office, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that M. B. Communications, Inc., licensee of radio station WYLF, has apparently willfully and repeatedly violated Sections 73.49, 73.1560(a)(1), and 73.1745(a) of the Commission's Rules (the "Rules")<sup>1</sup> by failing to enclose the WYLF tower within an effective locked fence or other enclosure and by operating with excessive power during daytime, postsunset and nighttime hours. We conclude that M.B. Communications, Inc. is apparently liable for a forfeiture in the amount of eleven thousand dollars (\$11,000).

**II. BACKGROUND**

2. On February 2, 2004, the Commission's Buffalo Office received an anonymous phone call stating that WYLF was operating overpowered during nighttime operation. On February 4, 2004, an agent of the Buffalo Office made field strength measurements approximately 1.07 miles from the WYLF antenna at coordinates N latitude 42 39 52, W longitude 076 06 00. The agent took measurements for daytime and nighttime operation and determined that the station was operating in excess of authorized levels for both modes of operation. On February 9, the agent made field strength measurements at 7:45 PM and monitored the station until 8:15 PM. During that time, the station did not reduce power to the authorized nighttime level. The agent took additional measurements on February 24, 2004 at 12:13 PM and confirmed that the station was operating in excess of authorized levels during the daytime.

3. On February 24, 2004, an agent from the Buffalo Office visually inspected the WYLF antenna and tower enclosure. The agent found that the gate to the enclosure was secured by a long-cabled lock, but the amount of slack in the cable resulted in an inadequately secured lock that allowed unimpeded access to the tower. The agent also observed a space of at least eighteen (18) inches between the bottom of the fence and the ground that allowed unimpeded access to the live tower.

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<sup>1</sup> 47 C.F.R. §§ 73.49, 73.1560(a)(1), and 73.1745(a).

### III. DISCUSSION

4. Section 73.49 of the Rules provides that “[a]ntenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures.” The Rules regarding how to secure tower sites are intended to ensure that the public is appropriately protected from any potential adverse effects from RF exposure. As described above, an inadequately secured lock on the gate and a gap between the bottom of the fence and the ground allowed unimpeded entry to the tower.

5. Section 73.1560(a)(1) of the Rules provides that “[e]xcept as provided for in paragraph (d) of this section, the antenna input power of an AM station as determined by the procedures specified in § 73.51 must be maintained as near as practicable to the authorized antenna input power and may not be less than 90 % or more than 105% of the authorized power.” Measurements made on February 4, 2004, and February 9, 2004, showed daytime operation at power levels of 115% to 123% of authorized power.

6. Section 73.1745(a) of the Rules provides that “[n]o broadcast station shall operate at times, or with modes of power, other than those specified and made a part of the license, unless otherwise provided in this part.” Measurements of station WYLF on February 4, 9, and 24, 2004, along with operating parameter entries in station logs dating back to December 2, 2002, showed the station was operating at power levels of 115% to 2551% of authorized power during daytime, postsunset, and nighttime operation.

7. Based on the evidence before us, we find that M.B. Communications, Inc. willfully<sup>2</sup> and repeatedly<sup>3</sup> violated Sections 73.49, 73.1560(a)(1), and 73.1745(a) of the Rules by failing to enclose the WYLF tower within an effective locked fence or other enclosure and failing to insure WYLF was operating at the authorized modes of power specified and made part of the license.

8. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) (“*Forfeiture Policy Statement*”), and Section 1.80 of the Rules<sup>4</sup>, the base forfeiture amount for AM tower fencing is \$7,000 and the base forfeiture amount for exceeding power limits is \$4,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended<sup>5</sup> (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, an eleven thousand dollar (\$11,000) monetary forfeiture is warranted.

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>3</sup> Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term “repeated”, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>6</sup>, and Sections 0.111, 0.311 and 1.80 of the Rules<sup>7</sup>, M.B. Communications Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eleven thousand dollars (\$11,000) for willful and repeated violations of Sections 73.49, 73.1560(a)(1), and 73.1745(a) of the Rules.

**IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this **NOTICE OF APPARENT LIABILITY**, M.B. Communications, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8<sup>th</sup> Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

11. Any response to this NAL must be mailed to Federal Communications Commission, Buffalo Office, 1307 Federal Building, 111 West Huron Street, Buffalo, New York 14202, and **MUST INCLUDE THE** NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>8</sup>

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the address listed above for the filing of the response. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of

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<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. §§ 0.111 and 0.311.

<sup>8</sup> See 47 C.F.R. § 1.1914.

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this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail Return Receipt Requested to M.B. Communications, Inc., 100 Main Street, Penn Yan, New York 14527.

FEDERAL COMMUNICATIONS COMMISSION

Gene J. Stanbro  
Resident Agent  
Buffalo Office

Attachment A – FCC List of Small Entities, October 2002